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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA

4 v.

13 CR 633 (PAE)

5 ROBERT T. MADISON,

6 Defendant.

7 -----x

8 New York, N.Y.
9 January 6, 2015
4:00 p.m.

10
11 Before:

12 PAUL A. ENGELMAYER

13
14 District Judge

15 APPEARANCES

16 PREET BHARARA
17 United States Attorney for the
Southern District of New York
18 BY: NANETTE L. DAVIS
Senior Litigation Counsel
Department of Justice

19 SERCARZ & RIOPELLE, L.L.P.
20 Attorneys for Defendant
21 BY: ROLAND G. RIOPELLE
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1 THE DEPUTY CLERK: United States v. Robert T. Madison,
2 13 Crim. 633.

3 Is the government ready?

4 MS. DAVIS: Yes.

5 Good afternoon, your Honor.

6 Nanette Davis for the United States.

7 THE COURT: Good afternoon, Ms. Davis.

8 THE DEPUTY CLERK: For the defendant?

9 MR. RIOPELLE: Yes. Roland Riopelle for the
10 defendant.

11 THE COURT: Good afternoon, Mr. Riopelle.

12 And good afternoon to you, Mr. Madison.

13 I have been informed, Mr. Riopelle, that your client
14 wishes to plead guilty to Count 2 of the superseding indictment
15 in this case. Is that correct?

16 MR. RIOPELLE: That is correct, your Honor. At this
17 point, the client wishes to withdraw his previously entered not
18 guilty plea in this case and enter a plea of guilty to Count 2,
19 pursuant to a plea agreement in satisfaction of the charges
20 pending against him.

21 THE COURT: Very good.

22 Mr. Madison, is that correct?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Counsel, can you hand up the signed plea
25 agreement. I have a copy. Let me take the signed version.

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1 Counsel, I take it the plea agreement is the same as
2 the one that was sent in an unsigned form to my chambers?

3 MS. DAVIS: Yes, your Honor.

4 THE COURT: Then I am going to mark this as Government
5 Exhibit 1 and we will come back to this a little later on in
6 this proceeding.

7 Mr. Madison, before accepting your guilty plea, I am
8 going to ask you certain questions so that I can establish to
9 my satisfaction that you wish to plead guilty because you are
10 guilty and not for some other reason. If you don't understand
11 any of my questions and you would like a further opportunity to
12 consult with your attorney, will you please let me know?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Are you able to speak and understand
15 English?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Ms. Hummel, will you place Mr. Madison
18 under oath.

19 THE DEPUTY CLERK: Yes, your Honor.

20 (Defendant sworn)

21 THE COURT: Mr. Madison, do you understand that you
22 are now under oath and that if you answer any of my questions
23 falsely, your answers to my questions may be used against you
24 in another prosecution for perjury?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: What is your full name?

2 THE DEFENDANT: Robert Todd Madison.

3 THE COURT: How old are you?

4 THE DEFENDANT: 43.

5 THE COURT: How far did you go in school?

6 THE DEFENDANT: Bachelor of arts degree.

7 THE COURT: Where was that?

8 THE DEFENDANT: George Washington University.

9 THE COURT: Have you ever been treated or hospitalized
10 for any mental illness?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: Are you now or have you recently been
13 under the care of a doctor or a psychiatrist?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Have you ever been hospitalized or treated
16 for any addiction to drugs or to alcohol?

17 THE DEFENDANT: No, your Honor.

18 THE COURT: In the past 24 hours, have you taken any
19 drugs, medicine or pills or drunk any alcoholic beverages?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: When was that?

22 THE DEFENDANT: I take a laundry list of
23 medications -- metformin, simvastatin, lantus which is an
24 insulin, and Xanax, but I have not taken Xanax in two days.

25 THE COURT: What are those medications for?

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1 THE DEFENDANT: For my diabetes, high blood pressure
2 and high cholesterol.

3 THE COURT: Do any of them impede your ability to
4 understand what is being said to you?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Do any of them impair your ability to
7 communicate?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: Is your mind clear today?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand what is happening in
12 this proceeding?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Do either counsel have any doubt as to the
15 defendant's competence to plead at this time?

16 MR. RIOPELLE: No, your Honor.

17 MS. DAVIS: No, your Honor.

18 THE COURT: Based on Mr. Madison's responses to my
19 questions, based on his demeanor as he appears before me and as
20 corroborated by counsel and independent assessment, I find that
21 Mr. Madison is competent to enter a plea of guilty at this
22 time.

23 Mr. Madison, have you had a sufficient opportunity to
24 discuss your case with your attorney?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Have you had a sufficient opportunity to
2 discuss the charge to which you intend to plead guilty, any
3 possible defenses to that charge and the consequences of
4 entering a plea of guilty?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Are you satisfied with your attorney's
7 representation of you, including your attorney's representation
8 in connection with entering into the plea agreement that I have
9 marked as Government Exhibit 1?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: I am now going to explain certain
12 constitutional rights that you have. You will be giving up
13 these rights if you enter a plea of guilty.

14 Under the Constitution and laws of the United States,
15 you are entitled to a speedy and a public trial by a jury on
16 the charges contained in the indictment. Do you understand
17 that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: At a trial you would be presumed to be
20 innocent and the government would be required to prove you
21 guilty by competent evidence beyond a reasonable doubt before
22 you could be found guilty. You would not have to prove that
23 you were innocent, and a jury of 12 people would have to agree
24 unanimously that you were guilty. Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: At that trial and at every stage of the
2 case, you would be entitled to be represented by an attorney,
3 and if you could not afford one, one would be appointed to
4 represent you free of charge. Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: During a trial the witnesses for the
7 government would have to come to court and testify in your
8 presence and your lawyer could cross-examine the witnesses for
9 the government, object to evidence offered by the government,
10 and if you desired, issue subpoenas, offer evidence and compel
11 witnesses to testify on your behalf. Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: At a trial, although you would have the
14 right to testify if you chose to, you would also have the right
15 not to testify and no inference or suggestion of guilt could be
16 drawn from the fact that you did not testify if that was what
17 you chose to do. Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: At trial the government would have to
20 prove each and every part or element of the charge beyond a
21 reasonable doubt for you to be convicted of that charge. Do
22 you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you understand that if you were
25 convicted at a trial, you would have the right to appeal that

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1 verdict?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Even at this time, right now, even as you
4 are in the process of entering a plea of guilty, you have the
5 right to change your mind, plead not guilty and go to trial.
6 Do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: If you plead guilty and I accept your
9 plea, you will give up your right to a trial and the other
10 rights I have just described, there will be no trial and I will
11 enter a judgment of guilty and sentence you on the basis of
12 your guilty plea after considering whatever submissions I
13 receive from you and your counsel and the government and after
14 receiving a presentence report prepared by the probation
15 department. Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: If you plead guilty, you will also have to
18 give up your right not to incriminate yourself because I am
19 going to ask you some questions about what you did in order to
20 satisfy myself that you are guilty as charged. Do you
21 understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Mr. Madison, have you received a copy of
24 the indictment containing the charges against you?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Have you read it?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Have you discussed it with Mr. Riopelle?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: You are charged in Count 2 with conspiracy
6 to commit honest services fraud in violation of Title 18,
7 United States Code, Section 1346. Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you understand that the maximum
10 possible penalty for this crime is 20 years' imprisonment?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: The maximum fine for this crime is the
13 greatest of \$250,000, twice the gross pecuniary gain derived
14 from the offense or twice the gross pecuniary loss to a person
15 other than you as a result of the offense. Do you understand
16 that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: For pleading guilty to this crime, you
19 will be required to pay a mandatory \$100 special assessment.
20 Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: For pleading guilty to this crime, you may
23 be required to pay restitution to any person injured as a
24 result of your criminal conduct. Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: I understand there is a provision in the
2 plea agreement that speaks more specifically to that, and we
3 will get to that in a few minutes.

4 For pleading guilty to this crime, you may be
5 compelled to forfeit any and all property constituting or
6 derived from proceeds obtained by your criminal conduct. Do
7 you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: For pleading guilty to this crime, you may
10 receive a term of up to three years' supervised release.
11 Supervised release means that you will be subject to monitoring
12 when you are released from prison. There are terms of
13 supervised release with which you must comply. If you don't
14 comply with them, you could be returned to prison for the
15 remainder of your term of supervised release without a jury
16 trial. You will be given no credit on that sentence for the
17 time that you served in prison as a result of your sentence for
18 this crime, and no credit for any time spent on post-release
19 supervision. Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you understand further that if I accept
22 your guilty plea and adjudge you guilty, that may derive you of
23 valuable civil rights such as the right to vote, the right to
24 hold public office, the right to serve on a jury and the right
25 to possess any kind of firearm?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Are you a United States citizen?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Now, under current law, there are
5 sentencing guidelines as well as other factors set forth in the
6 sentencing statute that a judge must consider in determining a
7 sentence. Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Have you spoken with your attorney about
10 the sentencing guidelines and those other factors?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you understand that the Court will not
13 be able to determine the guideline range that will form a part
14 of my determination of what a reasonable sentence is in your
15 case until after a presentence report has been prepared and
16 until after you and your attorney and the government's attorney
17 have all had the chance to challenge any of the facts reported
18 in that report by the probation officer?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that even though the
21 government has provided you with its current calculation of
22 your sentence under the sentencing guidelines and even though
23 the parties have stipulated to the accuracy of that
24 calculation, that sentencing range between 33 and 41 months'
25 imprisonment is not binding on the probation department and is

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1 not binding on the Court?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you understand that even after the
4 Court has determined what guideline range applies to your case,
5 the Court has the discretion under the current law to impose a
6 sentence that is higher or lower than the one suggested by the
7 guidelines?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And do you understand that if your
10 attorney or anyone else has attempted to predict what your
11 sentence will be, that prediction could be wrong? No one, not
12 your attorney, not the government's attorney -- no one can give
13 you any assurance of what your sentence will be because I am
14 going to decide your sentence and I am not going to do that
15 now. I really cannot do that now. Instead, I am going to wait
16 until I receive the presentence report prepared by the
17 probation department. I am going to do my own independent
18 calculation of how the sentencing guidelines apply to your
19 case. I am going to read thoughtfully the sentencing
20 submissions I receive from each side. Most of all, I am going
21 to determine what a reasonable sentence is for you based on all
22 of the factors set forth in the sentencing statute which is
23 known as Section 3553(a). Do you understand all that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Have you discussed these issues and the

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1 overall sentencing process with your attorney?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Even if your sentence is different from
4 what your attorney or anyone else has told you it might be,
5 even if it is different from what you expect, even if it is
6 different from the guideline range that is stipulated to in
7 your plea agreement, you would still be bound by your guilty
8 plea and you would not be allowed to withdraw your plea of
9 guilty. Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Has anyone threatened you or anyone else
12 or forced you in any way to plead guilty?

13 THE DEFENDANT: No, your Honor.

14 THE COURT: Now, counsel have handed up Government
15 Exhibit 1, the plea agreement. Had you read this agreement at
16 the time you signed it?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: I guess I ought to step back and make sure
19 that you have in fact signed it.

20 Ms. Davis, I see here your signature on the last page.
21 Is that your signature?

22 MS. DAVIS: It is, your Honor.

23 THE COURT: I see as well the signature of Richard
24 Tarlowe, the chief of Complex Frauds and Cybercrime unit here
25 in the Southern District. Is that his signature?

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1 MS. DAVIS: It is, your Honor.

2 THE COURT: Mr. Riopelle, I see your signature dated
3 December 9. Is that your signature?

4 MR. RIOPELLE: It is, Judge.

5 THE COURT: And, Mr. Madison, I see your signature
6 dated December 8. Is that your signature?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: So before you signed this agreement, had
9 you read it?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And had you discussed it with Mr. Riopelle
12 before you signed it?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Did you believe that you understood the
15 agreement before you signed it?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Did you willingly sign the plea agreement?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Did anyone force you to sign it?

20 THE DEFENDANT: No, your Honor.

21 THE COURT: Ms. Davis, will you kindly summarize the
22 material terms of the plea agreement.

23 MS. DAVIS: Your Honor, Mr. Madison is agreeing to
24 plead guilty to Count 2 of the plea agreement which charges a
25 conspiracy to commit honest services fraud. In consideration,

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1 the defendant will not be further prosecuted for any crimes
2 relating to the said conspiracy, any payments to any current or
3 former partners or employees of Access Communications and a
4 conspiracy to defraud Access Communications Advisor
5 Pharmaceuticals through the submission of fraudulent invoices
6 from November 2004 through 2009.

7 Also, at the time of sentencing, the government will
8 dismiss any open counts against the defendant.

9 There is a stipulation regarding restitution of \$1.416
10 million to be ordered jointly and severally with any
11 co-defendants to Access Communications on a payment schedule to
12 be determined by the Court after considering the defendant's
13 financial circumstances.

14 There is also a stipulation regarding the guidelines
15 range, stipulated that the total offense level is a 20, that
16 the criminal history category is a I and that the stipulated
17 guidelines range is 33 to 41 months with the applicable fine
18 range of that guidelines of 7,500 to 75,000 dollars.

19 The parties further agree that neither a downward or
20 upward departure from the sentencing guidelines is warranted or
21 that they will seek any departure or adjustment pursuant to the
22 guidelines other than what is set forth in the plea agreement,
23 but that either party may seek a sentence outside of the
24 stipulated guidelines range based on the 3553(a) factors.

25 The plea agreement also doesn't limit the rights of

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1 parties to present information to the Court or to the probation
2 office or limit the right of the government to seek denial of
3 an adjustment for acceptance of responsibility if the defendant
4 fails to clearly demonstrate acceptance of responsibility
5 through the allocution and subsequent conduct prior to the
6 imposition of sentence or for the government to seek an
7 obstruction of justice enhancement should the defendant engage
8 in conduct subsequent to the plea that would constitute
9 obstruction of justice.

10 The plea agreement also provides for an appeal waiver.
11 That is the standard for the U.S. Attorney's office, but it
12 does not include a waiver of this defendant's right to appeal
13 on the basis of ineffective assistance of counsel.

14 THE COURT: Very good. Thank you. That was very
15 helpful.

16 Mr. Riopelle, are you in agreement with the
17 government's summary of those terms?

18 MR. RIOPELLE: Yes, your Honor.

19 THE COURT: Mr. Madison, did you hear and understand
20 what Ms. Davis said when she summarized those terms of the plea
21 agreement?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Let me just highlight a couple of points
24 in the plea agreement.

25 As Ms. Davis states, the parties have stipulated that

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1 the guidelines call for a sentence here between 33 and 41
2 months. I want to make sure you understand that that
3 stipulation binds the parties here, but it doesn't bind me
4 because I have to make my own independent calculation of how
5 the guidelines apply. Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand as well that under the
8 agreement, you are giving up your right to ask within this
9 guidelines framework that I depart below that guideline range,
10 but you are not giving up your right to ask for a
11 below-guideline sentence based on the broader set of factors
12 relevant to Section 3553(a)? Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you also understand that under the plea
15 agreement, you are agreeing to pay jointly and severally with
16 your co-defendants an amount of restitution in the total amount
17 of \$1.416 million on a payment schedule to be set by me?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Finally, do you understand that under the
20 agreement, you are giving up your right to appeal or otherwise
21 challenge your sentence so long as I don't sentence you to more
22 than 41 months in prison?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you have any agreement with the
25 government about your plea or your sentence that has been left

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1 out of this written agreement?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Has anyone made any promise or done
4 anything other than what is contained in this plea agreement to
5 induce you to plead guilty?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Has anyone made a promise to you as to
8 what your sentence will be?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: Do you understand this agreement doesn't
11 bind any federal, state or local prosecuting authority other
12 than the United States Attorney?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Do you still wish to plead guilty pursuant
15 to this agreement?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: At this point I would like to ask you to
18 tell me in your own words what you did that makes you believe
19 you are guilty of the charge in the indictment.

20 MR. RIOPELLE: Just so that the record is clear, your
21 Honor, we have prepared a written allocution which has been
22 reviewed by the government, and I believe that the government
23 agrees that it is sufficient to satisfy the elements of Count
24 2. Because it is a somewhat complex crime, it is easier to do
25 it this way.

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1 THE COURT: I am totally fine with that.

2 Mr. Madison, I just want to make sure that you are
3 comfortable with the factual accuracy of everything that is set
4 forth in what you are about to read?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Go ahead.

7 THE DEFENDANT: During the period from 2004 to 2009, I
8 owned two businesses in Phoenix, Arizona. One was a printing
9 business named Creative Press, the other was a vending company
10 named East Coast Vending.

11 On many occasions from 2004 to 2009, Creative Press
12 was hired by a business named Access Communications to produce
13 printed materials for direct mail advertising. The direct mail
14 advertising all related to mailings that Creative Press was
15 hired to make to union members and their doctors all over the
16 country. The mailings were meant to promote the sale of
17 particular prescription drugs.

18 I knew that Access Communications was owned by Michael
19 and Matthew Mitrow. When I began dealing with Access, I knew
20 that, and later on Access Communications had been bought by
21 another company. After Access Communications was bought, I
22 knew that Michael and Matthew Mitrow continued to be employed
23 as executives of Access.

24 During the time between to 2004 and 2009, Access
25 Communications often forwarded payments to me to pay for the

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1 mailings that I had been hired by Access to do. Often, these
2 payments were sent to me before the mailings were made because
3 the cost of the mailings was high, and I did not have the cash
4 surplus in Creative Press's bank account to pay for the
5 mailings Access Communications had ordered.

6 On many occasions between 2004 and 2009, Matt Mitrow,
7 Joe Uzzolino and other employees of Access Communications
8 contacted me and cancelled the mailings after sending me the
9 funds I needed to pay for the mailings Access Communications
10 had ordered. In addition, on some occasions, Matt Mitrow, Joe
11 Uzzolino and other employees of Access Communications contacted
12 me and cancelled parts of print jobs after it had paid for
13 them; as a result, my company, Creative Press, had excess cash,
14 because the mailings my company had been hired to make were not
15 actually made and print jobs my company was expecting to
16 produce had been cancelled. As a result of Access
17 Communications' cancellations of jobs it had already paid for,
18 my company did not have to pay the postage it expected it would
19 pay or produce all the printed materials it originally expected
20 to produce.

21 When they cancelled a mailing or a print job, Matthew
22 Mitrow, Joe Uzzolino and other employees of Access
23 Communications would usually contact me by telephone. In
24 addition, I communicated by email with both Michael and Matthew
25 Mitrow about getting advance payment for mailings and print

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1 jobs that my company had been asked to produce for Access
2 Communications. At the time, Access Communications was located
3 in New Jersey, and I and my business were located in Phoenix,
4 Arizona.

5 Neither Matthew Mitrow nor anyone else from Access
6 asked me to return the excess cash that my company had received
7 in connection with mailings it never made and print jobs it
8 never produced; instead, I was asked to pay a variety of
9 different bills for the Mitrows and other executives at Access,
10 and I had my companies do that. For example, Michael Mitrow
11 asked me to pay for his charter jet travel, and I had my
12 companies do that. Matthew Mitrow asked me to pay for
13 renovations on his house, and I had my companies do that. When
14 I had my companies make these payments, it was my intention to
15 continue the business relationship between Creative Press and
16 Access Communications, which I understood was controlled by
17 Michael and Matthew Mitrow, even after it was bought by another
18 company. I also knew that some of the mailings and print jobs
19 that had originally been requested by Access Communications
20 were never made.

21 In some cases, I had East Coast Vending pay bills for
22 the Mitrows, even though East Coast Vending did not do printing
23 work for Access. For example, I had East Coast vending pay
24 some of the charter jet bills that Michael Mitrow asked me to
25 pay. At the time that I had East Coast Vending pay these

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1 bills, I knew that it would be difficult for someone from
2 Access Communication to trace those payments back to me because
3 the employees at Access Communications only dealt with Creative
4 Press. When I had my companies pay bills for the Mitrow
5 brothers, I had them mail the checks and send wire transfers to
6 the vendors that Michael and Matthew Mitrow asked me to pay.

7 At the time I had my companies pay bills for the
8 Mitrows, I knew that what I was doing was wrong because I knew
9 that Creative Press had been paid for mailings it did not make
10 and it had been paid for print jobs it had not produced. I
11 knew that Creative Press should have returned that money to
12 Access Communications instead of paying the Mitrows' bills.

13 I have discussed the concept of venue with my
14 attorney --

15 MR. RIOPELLE: Just for the record, Judge, I think
16 that the government can represent to the Court that there is
17 proper venue in the Southern District. The client does not
18 have a memory of the events there that give the Court venue, so
19 I have asked him to make a statement waiving venue for the
20 purposes of these proceedings.

21 THE COURT: Thank you.

22 Go ahead.

23 THE DEFENDANT: I have discussed the concept of venue
24 with my attorney. I know that venue means I have the right to
25 have my case tried in a district court where my crime occurred.

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1 To the extent it is necessary, I waive my right to have the
2 crime charged in Count 2 of the indictment tried in Arizona or
3 in New Jersey where Access Communications is located.

4 THE COURT: Very good.

5 You said a moment ago that you knew what you were
6 doing was wrong. Did you also know that you were committing a
7 crime?

8 THE DEFENDANT: I knew it was wrong and therefore I
9 shouldn't be doing it. I didn't know at the time it was
10 criminal. I knew it was a bad decision. I have since --

11 THE COURT: It is not required that a defendant know
12 the specific statute that he or she is violating, but it is
13 ordinarily the case that I ask and the answer is yes, that a
14 defendant who is pleading guilty acknowledges that they knew
15 they were committing a crime.

16 Mr. Riopelle, perhaps you can just take a moment with
17 your client.

18 (Discussion off the record between defendant and
19 counsel)

20 THE DEFENDANT: My answer is yes, your Honor.

21 THE COURT: Thank you.

22 Are you pleading guilty voluntarily and of your own
23 free will and because you are in fact guilty?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Does government counsel agree that there

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1 is a sufficient factual predicate for a guilty plea?

2 MS. DAVIS: Yes. I would just note for the record,
3 your Honor, that with regard to venue --

4 THE COURT: I was about to ask you.

5 MS. DAVIS: -- the government would be prepared to
6 prove that Access Communications' bank account was located in
7 the Southern District of New York and at least one check to a
8 vendor was mailed to the Southern District of New York.

9 THE COURT: Very good. Thank you.

10 Mr. Riopelle, you don't dispute that, do you?

11 MR. RIOPELLE: No, not at all. It is just that my
12 client doesn't have the knowledge --

13 THE COURT: Understood. I appreciate the care you
14 took with the plea allocution and particularly that point.

15 Does defense counsel agree that there is a sufficient
16 factual predicate for a guilty plea?

17 MR. RIOPELLE: I do, your Honor.

18 THE COURT: Ms. Davis, just to be clear, because of
19 the fact of the Skilling decision, I take this fits under the
20 kickback box and, therefore, there is no Skilling problem here?

21 MS. DAVIS: Correct, your Honor.

22 THE COURT: Does defense counsel know of any valid
23 defense that would prevail at trial or any reason why your
24 client should not be permitted to plead guilty?

25 MR. RIOPELLE: No, your Honor, I do not.

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1 THE COURT: Mr. Madison, because you acknowledge that
2 you are in fact guilty as charged in the indictment, because I
3 am satisfied that you know of your rights including your right
4 to go to trial, because I am satisfied that you are aware of
5 the consequences of your plea, including the sentence which may
6 be imposed and because I find that you are voluntarily pleading
7 guilty, I accept your guilty plea and I enter a judgment of
8 guilty on the one, Count 2, to which you have pled guilty.

9 The next step in your case, as you know, is the
10 sentencing process, and I will ask you to pay close attention
11 to the following.

12 The probation department is going to want to interview
13 you in connection with the presentence report that it will
14 prepare. If you choose to speak with the probation department,
15 please make sure that anything you say is truthful and
16 accurate. I read those reports very carefully. They are often
17 very important to me in determining what a reasonable sentence
18 is in a particular case.

19 You and your counsel have a right to examine the
20 report and to comment on it at the time of sentencing.

21 I urge you to read it and discuss it carefully with
22 Mr. Riopelle. If there are any mistakes in it, please point
23 them out to Mr. Riopelle so that he can bring them to my
24 attention before sentencing. Will you agree to do that?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Mr. Riopelle, is this a case in which your
2 client is seeking an expedited sentence?

3 MR. RIOPELLE: No, your Honor.

4 THE COURT: Let me confer with my law clerk as to a
5 sentencing date.

6 (Pause)

7 THE COURT: How would Friday morning, May 29th, work?
8 Does anyone have a problem with that?

9 MR. RIOPELLE: That's fine with us.

10 THE COURT: Ms. Davis, I know you are coming from
11 Washington, correct?

12 MS. DAVIS: If I could just have one moment, your
13 Honor?

14 THE COURT: If Friday is an issue, we can work around
15 it.

16 MR. RIOPELLE: How does that relate to Memorial Day?
17 That's my question.

18 THE COURT: That is after Memorial Day. I was
19 sensitive to that.

20 MS. DAVIS: Fine, your Honor.

21 THE COURT: Why don't we say 9:30 a.m. on Friday, May
22 29th. If counsel uncover a problem, I am happy to move that
23 date.

24 Sentencing is set then for that date and time.

25 Defense counsel, you must arrange for your client to

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1 be interviewed by the probation department within the next two
2 weeks.

3 Ms. Davis, you should provide your case summary to the
4 probation department also within the next two weeks.

5 Defense submissions in connection with sentencing are
6 due two weeks before sentencing.

7 The government's submission is due one week before.

8 If you go on the SDNY web site, you will find copies
9 of my individual rules with respect to the filing with the
10 clerk of court a sentencing submission.

11 What is the defendant's bail status?

12 MR. RIOPELLE: I believe that he is released on his
13 own recognizance.

14 THE COURT: And is there any objection to that
15 continuing?

16 MS. DAVIS: No, your Honor.

17 THE COURT: Then I am happy to continue those terms.

18 Mr. Madison, do you understand that all of the
19 conditions on which you have been released until now continue
20 to apply and that a violation of any of those conditions can
21 have very serious consequences for you at the time of
22 sentencing?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: In particular, you must be in this
25 courtroom for sentencing at the time and date set or you will

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1 be guilty of a separate crime called bail jumping and subject
2 to a fine or a prison term in addition to whatever sentence you
3 may receive for the crime to which you have just pled guilty.

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Anything further from the government?

8 MS. DAVIS: No, your Honor.

9 THE COURT: Anything further from the defense?

10 MR. RIOPELLE: No, Judge. Thank you.

11 THE COURT: Thank you.

12 We stand adjourned.

13 Counsel, here is the plea agreement back.

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